*Case*[3], Palles, C.B. considered that this should be done. Logically one should either regard the articles in their entirety or disregard them altogether. The Courts have, however, taken a less logical but more practical line intermediate between the two positions. Provisions in articles giving a large share of the profits to those responsible for "management" are not uncommon even in the case of public companies. Some years ago a single management share in a company operating in Singapore, of the nominal value of £1, had to be bought out for £100,000. I do not think that it would be reasonable to disregard the articles in these cases even if the question were still open.

*Appeal allowed;*
*Cross-appeal dismissed.*

Solicitors: *Bannon & Bailey; Shearn, Delamore & Co.*

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## ONG PHAIK GAN (w) & ORS. v. CHO BENG SOH (w)

[O. C. J. (Wilson J.) May 16, 1955]

[Penang — Civil Suit No. 257 of 1954]

*Landlord and Tenant — Trustees — Claim for possession of premises where family "Sin Choo" were housed — Occupier whether licensee or tenant — Sums described as rent may not be rent.*

The plaintiffs in this case, as trustees, were owners of a family house. They claimed possession of the premises from the defendant. The defendant's husband, who had since died, occupied the house, and in consideration of his occupation it was his duty to clean and maintain the "Sin Choo" of the plaintiffs' family which were placed in the house. Further consideration of $20 per month was paid by the defendant's husband and, subsequently by the defendant for occupation for which receipts were issued by the plaintiffs every month and the sum was described therein as rent. The plaintiffs were always entitled to access to the house for the purposes of ancestral worship.

Held: (1) the defendant's husband was only a licensee; (2) the mere fact that sums were described as rent did not prove that they were rent if, in fact, they were not.

CLAIM for possession.

*Eusoffe Abdoolcader* for the plaintiffs.

*Lim Ewe Hock* for the defendant.

*Cur. Adv. Vult.*

**Wilson J.**: — The plaintiffs are, as trustees, the owners of a house No. 35, Noordin Street, Penang, and hold it as a family house upon and subject to the trust mentioned in the deed of trust. They claim possession of the premises from the defendant. The trust was created for a period of twenty-one years which expired on the 18th May, 1954, and they now wish to sell the premises with vacant possession. The defendant's husband went into occupation of the house in the year 1933. He died about five years ago and the defendant has remained in occupation ever since. On the 13th January 1954, the plaintiffs' solicitors, by letter, requested and required the defendant to quit and deliver up peaceful possession of the premises within one month.

The sole question for consideration in this case is whether or not the defendant's husband was a tenant or licensee of the premises. Either before he went into occupation or shortly afterwards the "Sin Choo" of the plaintiffs' family were placed in the house. It is quite clear that whether it was before or after, he was always aware of the fact that in consideration of his occupation it was his duty to clean and maintain the "Sin Choo". It is, of course, unfortunate that the defendant's husband is dead and that the defendant has no knowledge of the original transaction and depends entirely on what her deceased husband told her. The amount paid by the defendant's husband and, subsequently, the defendant for occupation was small. The case is complicated by the fact that receipts were issued every month in respect of the $20 paid per month and the $20 is described therein as rent. The mere fact that these sums are described as rent does not, of course, prove that they were rent if, in fact, they were not.

On the facts of the case I have come to the conclusion that the defendant's husband was only a licensee of the premises, and in these circumstances I find that it is immaterial that fresh receipts were issued in respect of what was described as rent after the notice to deliver up possession was given.

It is to be noted that I am satisfied that the plaintiffs, by whatever agreement they had with the defendant's husband, were entitled to access to the house for the purposes of ancestral worship at any time.

There must be judgment for the plaintiffs for the possession of No. 35, Noordin Street, Penang, and for mesne profits at $20 a month from the 1st June, 1954, until the date of possession, and for the costs of this action.

*Claim allowed.*

Solicitors: *Ong Huck Lim & Co.; Lim, Lim & Oon.*

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## KHOO TECK YAM v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) April 13, 1955]

[K. L. — Criminal Appeal No. 20 of 1955]

*Road Traffic — Motor Vehicles Commercial Use Regulations, 1945, reg. 7 — Haulage permit for carriage of goods — Motor Vehicles Third Party Risks Regulations, 1946, reg. 3(1) and (2) — Burden of proof — Evidence Ordinance, 1950, s. 106.*

In this case the appellant was convicted and sentenced to a fine of $150 for permitting his station wagon to be used for the carriage of goods, to wit wooden cases containing pieces of wood without a haulage permit, an offence punishable under reg. 7 of the Motor Vehicles Commercial Use Regulations, and fined $100 for permitting the said vehicle to be used on the public road without there being in force a policy of insurance in respect of third party risks contrary to reg. 3(1) of the Motor Vehicles Third Party Risks Regulations.

It appeared that there was a third party insurance policy in respect of the vehicle in question but this policy did not cover the carriage of goods in connection with any trade or business or use for any purpose in connection with the motor trade.

Held: (1) from the nature of the appellant's business and from the nature of the goods in the vehicle it could be inferred that the wooden cases were being carried for commercial purposes and therefore a haulage permit was required; (2) by virtue of s. 106 of the Evidence Ordinance the burden of proving the existence of a policy to cover the use of the vehicle for carriage of goods in connection with any trade or business was upon the appellant and as he offered no defence, the appeal must be dismissed.

*Case referred to:—*

(1) *Williams v. Russell* 29 Cox 642.

MAGISTRATE'S CRIMINAL APPEAL.

*Ng Ek Teong* for the appellant.

*J. P. Kirby* (Federal Counsel) for the respondent.

**Buhagiar J.** : — The appellant was charged before the Kuala Lumpur Magistrate's Court as follows:—

(1) That you on 15.1.54 at 10.50 a.m. at Sultan Street, Kuala Lumpur, being the owner of Station Wagon No. BA 7352 did permit the said vehicle to be used for the carriage of goods without a Haulage Permit, and that you have thereby committed an offence punishable under sec. 7 of the Motor Vehicles Commercial Use (M.P.) Regulations.

(2) That you at the same time and place being the owner of Station Wagon No. BA 7352 did permit the said vehicle to be used on the public road by one Yap Yoke Sam without there being in force in relation to the user of the said motor vehicle such a policy of insurance or such a security in respect of third party risks, as complies with the requirements of the Motor Vehicles Third Party Risks Regulations and that you have thereby committed an offence under sec. 3(1) of the Motor Vehicles Third Party Risks Regulations and punishable under sec. 3(2) of the said Regulations.

The appellant was found guilty on both charges, convicted and sentenced to a fine of $150 on the first charge and $100 on the second charge.

This appeal is against conviction and sentence.

The facts are simple. The appellant is the owner of motor van BA 7352. On the 15th January, 1954 the van was proceeding from the direction of Davidson Road towards Suitan Street loaded with eight wooden cases, the size of which is about 2 feet; the cases contained pieces of wood. The appellant is not in possession of a haulage permit in respect of this van. There is a third party insurance policy in respect of this van but this policy does not cover the carriage of goods in connection with any trade or business or use for any purpose in connection with the motor trade.

Under regulation 7 of the Motor Vehicles Commercial Use Regulations (B.M.A. G.N. No. 30 of No. 1, 1945) it is an offence for any person to use or cause or permit to be used a motor vehicle for the carriage of goods without a permit. In these Regulations "goods" is defined as meaning "goods or burden of any description but does not include passenger's luggage carried on a passenger vehicle in which the passenger is travelling." There is no doubt that the wooden cases on the van are "goods" within this definition. It was argued by the learned Counsel for the appellant that although regulation 7 of the said Regulation makes no distinction as to the nature of the goods prohibited to be carried, it is clear from the short title of these Regulations that the legislation is intended to prohibit the carriage of goods for commercial purposes and does not affect the carriage of one's own goods for private use. I agree that the letter of the said Regulation would seem to cover a wider prohibition than the legislator intended; it would seem that under regulation 7 a person who carries, say, a few pots of plants in his private car would be guilty of an offence, such pots of plants being "goods or burden of any description" and not "passenger's luggage carried on a passenger vehicle in which the passenger is travelling". It is not necessary for me, however, in the present case to give a ruling on this point. It is logical to infer from the nature of the appellant's business and from the nature of the goods in the van that the cases were being carried for commercial purposes. The appellant offered no defence.

With regard to the second charge there is *prima facie* evidence adduced by the prosecution that the policy does not cover the carriage of goods for commercial purposes, although the burden of proving the existence of a policy to cover the use of the vehicle for the carriage of goods in connection with any trade or business was in my opinion on the appellant by virtue of section 106 of the Evidence Ordinance, 1950. (See also *Williams v. Russell*[1], *per* Talbert J.). But the appellant offered no defence.

The learned Magistrate was therefore right in convicting the appellant on both charges and the appeal must be dismissed.

*Appeal dismissed.*

Solicitors for the appellant: *Braddell & Ramani.*